DOCUMENT RESUME

ED 235 975 RC 014 418

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TITLE Speculation Upon the Implementation of P.L. 94-142 in New Mexico's Rural School Districts.
PUB DATE Nov 83
GRANT G008200490
NOTE 13p.; Paper presented at the Annual Southwestern Conference for Rural Education (3rd, Las Cruces, NM, November 12, 1983.).
PUB TYPE Viewpoints (120) -- Speeches/Conference Papers (150)

EDRS PRICE MF01/PC01 Plus Postage.
DESCRIPTORS Compliance (Legal); Disabilities; Educational Finance; Elementary Secondary Education; *Federal Aid; Federal Legislation; Federal Regulation; *Federal State Relationship; *Program Implementation; *Rural Schools; School Districts; *Special Education; State Departments of Education; State Programs; State School District Relationship; State Standards
IDENTIFIERS *Education for All Handicapped Children Act; Impact; *New Mexico

ABSTRACT

A paper on the Education for All Handicapped Children Act of 1975 (P.L. 94-142) provides information to state legislators on requirements and application procedures and speculates on significance of compliance for rural New Mexico school districts (New Mexico has never implemented P.L. 94-142). The five purposes of the paper are to describe major provisions of the law, describe financial considerations, speculate on benefits of implementation for rural districts, describe start-up requirements for rural local education agencies (LEAs), and speculate on requirements for continued compliance. Ten major provisions of the law, referenced to sections of the 1982 New Mexico Standards for Special Education, are covered: congressional intent, entitlements and allocations, state plans and local applications, procedural safeguards and due process procedures, least restrictive environment, pupil assessment evaluation, Individualized Education Programs, comprehensive system of personnel development, cooperation with other agencies, and working with parents. Funding formulas for New Mexico and uses of funds are discussed. Benefits of implementation in 14 major areas are listed. Similarity of P.L. 94-142 to existing New Mexico standards is noted. Six areas which require attention so that rural LEAs could comply with P.L. 94-142 requirements and receive continued funding are given. The question of the level of state entitlement for New Mexico is raised. (MH)

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rec 15-11-83

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Presented at the Third Annual
Southwestern Conference for Rural Education,
Las Cruces, NM, November 12, 1983

RC014418

The work described herein was supported in part by Federal Project No. G008200490

Speculation Upon the Implementation of P.L. 94-142 In New Mexico's Rural School Districts

Public Law 94-142 or The Education for All Handicapped Children Act of 1975 was signed into law by President Ford in 1975. However, according to Holland (1980), the President was reluctant to sign the bill even though it had passed both houses by overwhelming majorities (Senate 87-7; House 407-7) since he was critical of the "detail and complexity of administrative requirements that would unnecessarily assert federal control over traditional state and local government functions (p. 1)." Similar concerns have been voiced often in the State of New Mexico which, to date, is the only state to not implement the funding law.

The last time the law was formally considered in New Mexico was in 1979 when the State Board of Education defeated the measure in a 5-5 deadlock (Heimbach, 1983). The present paper was invited because it was felt that another vote by the State Board of Education is imminent. The law is being reconsidered due to recent state legislative approval of Marquez and Olguin's Senate Memorial II to take immediate action to secure P.L. 94-142 funds and Governor Anaya's vocal support for implementation. Such action by the legislature and governor at this time would

seem to have its roots in the current educational finance shortfall.

The five-fold purpose of the present paper is a) to describe the major provisions of the law; b) to describe financial considerations; c) to speculate upon benefits of implementation for rural districts; d) to describe start-up requirements for rural local education agencies (LEAs); and e) to speculate upon requirements for continued compliance.

Major Provisions of the Law.

The following ten major provisions of P.L. 94-142 have been outlined as follows by C. Lamar Mayer (1982). The numbers in parentheses after each section refer the reader to sections of the New Mexico Standards for Special Education (1982):

1. Congressional Intent. Congress intended that a free and appropriate education and related services be provided for all handicapped children. (1.1; 1.4)

2. Entitlements and allocations. Section 611 of the law authorized federal grants to states to assist in providing mandated programs. LEAs may also apply directly for preschool incentive grants, grants for the removal of architectural barriers, and grants for educational media.

3. State plans and local applications. Each state must develop an annual state plan for the education of handicapped children and seek approval of this plan from the U.S. Commissionar of Education in order to qualify for federal assistance. LEAs must apply to the state education agency (SEA) in order to receive flow-through funds.

4. Procedural safeguards and due process procedures. SEAs and LEAs are required to provide procedural safeguards and due process for students and their parents or guardians. (1.11-2.12; 3.1-3.4)

5. Least restrictive environment. Children should be considered for placement in the least restrictive educational environment which will allow them to succeed. Put another way, handicapped children must be educated with non-handicapped children to the maximum extent possible. (1.3)

6. Pupil assessment evaluation. SEAs must establish and LEAs must employ assessment and evaluation procedures and materials that are not discriminatory. No one test may be used for placement purposes. (2.1-2.9)

7. The Individualized Educational Program (IEP). The LEA must develop, implement, monitor and review annually a written IEP for each child placed in special education programs. (2.10)

8. Comprehensive system of personnel development (CSPD). The SEA must describe a system for development and implementation of a comprehensive system of personnel development. LEA applications must describe use of the SEA system.

9. Cooperation with other agencies. Compliance with the law requires that SEAs and LEAs must cooperate with each other and with other appropriate public and private agencies relative to provision of services. (1.7)

10. Working with parents. Parents of handicapped children have the right to be involved in the decision-making process and to due process hearings should they disagree with programs or procedures. (1.11)

Financial Considerations.

Under P.L. 94-142, the SEA is entitled to between 5% and 25% of appropriated funds while 75% to 95% of the funds flow through to LEAs. Major constraints include the following:

1. the 25% of the funds appropriated to the SEA must be used for administrative purposes (e.g., technical assistance; compliance monitoring).

2. LEA flow-through funds must not be used to supplant state money (i.e., you cannot spend less money than you did before because you have P.L. 94-142 money).

3. LEAs can only use P.L. 94-142 funds for the "excess costs" of educating handicapped children.

4. Individual LEAs must be eligible to generate at least $7,500 to obtain any flow-through funds.

New Mexico's LEAs and SEA would be entitled to funds on a formula that multiplies the number of handicapped children (5-21 years) actually receiving special education and related services on a December 1st child count by 40% (or applicable percentage) of the average funds spent, per pupil in U.S. public elementary and secondary schools (Holland, 1980). Given this formula, Louis Danielson of the U.S. Department of Education has recently estimated that New Mexico gave up 5.5 million dollars during the 1983-84 fiscal year by going past the September 30th application date (Heimbach, 1983). A per-child estimate has been offered by Barbara Ellis, Director of Special Education for Santa Fe schools. This estimate is in the $175-190.00 per child range (Heimbach, 1983). Such figures need to be balanced against a state allocation of $61.9 million dollars for programs for 28,572 handicapped children in 1981-82 (New Mexico State Department of Education, 1982) and Elie Gutierrez's recently reported $73.2 million budget for

1982-83 and $75 million budget for 1983-84 (Heimbach, 1983).

Benefits of Implementation.

P.L. 94-142 funds can be used for the excess costs of providing services mandated by state and federal guidelines. In addition to flow-through funds, the law makes available additional funds in the form of direct grants to LEAs. Therefore, implementation of the law could impact upon quality of special education programs by addressing at least the following fourteen major areas in rural LEAs.

1. Provision of technical assistance to LEAs by the SEA.
2. Inservice training of professional and paraprofessional staff.
3. Release-time for acquisition of technical assistance and/or inservice training.
4. Parent training.
5. Research and development projects.
6. Expansion of existing programs (e.g., vocational education for the handicapped).
7. Capital outlay projects (e.g., new rugs for a deaf education classroom).
8. Acquisition of additional curriculum, assessment, and diagnostic materials.
9. Operation of media and materials centers to facilitate use of new technology.

10. Start up of preschool programs for three and four year old children.

11. Removal of architectural barriers.

12. Hiring additional full-time staff.

13. Purchase of instructional hardware and software.

14. Improvement in transportation systems.

In more general terms, an additional benefit would be the return of New Mexico federal tax dollars to New Mexico. These funds are now being used to fund special education programs under P.L. 94-142 in the other forty-nine states.

Start-up Requirements for LEAs.

Since the regulations for P.L. 94-142 (Department of Health, Education and Welfare, 1977) and the New Mexico State Standards for Special Education (NM State Department of Education, 1982) appear to be very close, it seems that a first step toward compliance with the federal regulations would be for rural LEAs to make every attempt to closely adhere to state mandates. Such adherence can be facilitated through the dual processes of SEA compliance monitoring and technical assistance. As Howe (1981) has pointed out:

> Ever since P.L. 94-142 was passed in 1975, most directors of special education have been occupied with revising their procedures so as to be in compliance. Evaluation usually takes the form of checks - lists prepared to determine if the agency has met all of the due process and other requirements contained in the federal and state legislation. Monitoring, then, requires a

> "yes" or "no" response to each item. To be in compliance, a district or intermediate unit must earn a "yes" for each question included. (p. 124)

Next, in order to receive initial P.L. 94-142 flow-through funds, LEAs must make an application to the SEA which details procedures for local compliance with the mandates of P.L. 94-142 (Holland, 1980). Procedures and format for these annual applications shall be established by the SEA. Specific information concerning the required content of these applications are contained in the August 23, 1977 issue of the Federal Register, pp. 42464-42518 and will not be repeated here. The required contents include detailed procedures for such areas as child identification; parent involvement; facilities, personnel, and services; and participation in the regular education program. LEA application procedures are detailed in Sections 121a.220-121a.239 of the Federal Register cited above.

Requirements for Continued Compliance.

Although matching of current requirements under the 1982 New Mexico Standards and Section 504 of the Vocational Rehabilitation Act of 1973 indicate that the state is close to P.L. 94-142 requirements, the authors speculate that rural LEAs will need to address at least the following six areas in order to be in compliance and to continue to receive flow-through funds once the law is implemented:

1. Expand office staff to help SEA complete eight required federal forms, annual application to SEA, and an LEA plan for following SEA Comprehensive System of Personnel Development (CSPD).

2. Maintain sufficient student population to be entitled to at least $7,500 in flow-through funds.

3. Consolidation with other rural LEAs if the $7,500 amount cannot be achieved alone.

4. Expansion of programs to adhere to legal precedents set under P.L. 94-142 (e.g., expanded school year for severely handicapped; sign-language interpreters in classrooms for deaf students; catheterization for incontinent students).

5. Revamp accounting procedures due to excess cost and non-supplanting requirements.

6. Open doors to additional federal compliance monitoring. This monitoring is carried out by the Office of Special Education and Rehabilitative Services. Four components are included in its monitoring procedures (Howe, 1981).

Summary and Conclusions.

In view of renewed interest in P.L. 94-142 in New Mexico in recent months, the authors have attempted to provide information regarding requirements and application procedures and to speculate upon what continued compliance may mean to rural LEAs.

Two areas which need to be further explored relative to initial compliance are gifted education and beginning level of state entitlement. Related to the gifted student category (which is recognized as a special education category in New Mexico), the question seems to be whether the requirements of P.L. 94-142 would be binding in view of

the repeal of the Gifted and Talented Children's Act of 1978 P.L. 95-561). The second area (level of state entitlement) is particularly intriguing. Would New Mexico be entitled to the full 40% level which former implementors reached by 1982, or would it need to begin back at the original 5% level where other states began in 1978?

These questions and others certainly need to be asked. In the final analysis, it seems necessary for all individuals concerned (e.g., rural LEA administrators, State School Board members, SEA personnel) to decide whether the federal regulations and administrative costs of compliance make it worthwhile for the state to implement the law. It should also be noted here that in addition to the adjustments that will need to be made by the LEAs, compliance will also involve some minor changes in the technical language of the SEA standards to come in line with P.L. 94-142 as well as the initial developement of a Comprehensive System of Personnel Development (CSPD).

Notes

1. For the purposes of this paper, a rural school district is defined as one within a rural community or a county where 60% or more of the communities are rural. A community may be considered rural if it meets one of two criteria: a) isolation - 25 miles or more from a city or town of 50,000 and not a SMSA; b) population sparcity - 200 or fewer residents per square mile (Small/Rural Education Review Panel, 1982).

2. Appropriations are typically significantly less than "authorizations". For example, congress authorized 2.32 billion in 1980-81 and appropriated 862 million (Holland, 1980).

3. If the LEA can document that a free and appropriate education is being provided to all handicapped children to the extent of the law, a waiver can be requested from the U.S. Commissioner of Education.

4. If in direct conflict, federal guidelines prevail (NAESP, 1982).

5. Consolidated applications are allowed.

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